

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 WILLIAM R. HICKOX, JR.; ESTELA
5 HICKOX; and LAUREN N. HICKOX,

Case No. 2:19-CV-00367-JAD-EJY

6 Plaintiffs,

ORDER

7 v.

8 THE WATERPARK, LLC d/b/a WET 'N'
9 WILD LAS VEGAS; DOES 1 through X; and
ROE CORPORATIONS 1 through XX;
inclusive,

10 Defendants.
11

12 Before the Court is the stipulation for an independent medical examination ("IME") of
13 Plaintiff William R. Hickox, Jr. by Dr. Charles D. Rosen, M.D. (ECF No. 18). This is a personal
14 injury lawsuit seeking damages for injuries arising from alleged negligence, vicarious liability,
15 negligent infliction of emotional distress, and loss of consortium causes of action. Plaintiff's First
16 Amended Complaint alleges that he was "riding the Rattler slide at Defendants' premises when his
17 head was thrust into the wall, causing said Plaintiff to suffer injuries." ECF No. 6 ¶ 11.

18 Fed. R. Civ. P. 35 permits a court to order a party whose mental or physical condition is in
19 controversy to submit to a physical or mental examination. This rule is permissive, not mandatory.
20 Fed. R. Civ. P. 35(a)(1) (providing "[t]he court where the action is pending *may* order a party whose
21 mental or physical condition . . . is in controversy to submit to a physical or mental examination . . .
22 ." (Emphasis added.)) A court is not *required* to order an IME upon a showing that the person's
23 medical condition is in controversy and that there is good cause; rather, the standard remains
24 permissive. *Storlie v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 549077, *2 (D. Nev. Jan. 4, 2010)
25 (citation omitted).

26 Plaintiff William R. Hickox, Jr. has put his medical condition at issue, because he is seeking
27 damages and attorney fees for injuries in his "health, strength and activity, sustained shock and injury
28 to his person, and incurred medical expenses . . ." as a "direct and proximate result of the negligence,

1 carelessness, and recklessness of the Defendants.” ECF No. 6 ¶¶ 17, 18, 24, 25. Further, Plaintiff
2 Estela Hickox’s loss of consortium claim against Defendants (ECF No. 6, ¶¶ 29–31) derives from,
3 and recovery is contingent upon, her injured spouse’s recovery. *Estate of Tucker ex rel. Tucker v.*
4 *Interscope Records, Inc.*, 515 F.3d 1019, 1039 (9th Cir. 2008) (“To support a loss of consortium
5 claim, marital spouses must allege that their partner suffered an injury that is ‘sufficiently serious
6 and disabling to raise the inference that the conjugal relationship is more than superficially or
7 temporarily impaired.’”) (citing *Mollen v. Kaiser Found. Hosp.*, 616 P.2d 813, 823 (1980)). Further,
8 the parties in this case stipulated to the time, place, manner, conditions, and scope of the Plaintiff’s
9 medical examination, as well as the professional who will perform the exam. *See* Fed. R. Civ. P.
10 35(a)(2)(B). Given these facts, the Court finds that good cause exists for a mental examination of
11 Plaintiff William R. Hickox Jr pursuant to Fed. R. Civ. P. 35.

12 Accordingly,

13 IT IS HEREBY ORDERED that a one hour IME of Plaintiff William R. Hickox, Jr. shall be
14 conducted on a mutually agreeable date and time by Dr. Charles D. Rosen, M.D., at his office located
15 at 525 Seaview Way, Suite 101A, Long Beach, California 90802.

16 IT IS FURTHER ORDERED that Dr. Rosen and Mr. Hickox will be allowed fifteen (15)
17 minutes leeway to account for travel time or other incidents that may delay the start time of the IME.

18 IT IS FURTHER ORDERED that there is to be no discussion between Dr. Rosen and Mr.
19 Hickox regarding liability. However, Dr. Rosen will be permitted to ask questions regarding how
20 Mr. Hickox alleges he was injured and Mr. Hickox’s complaints regarding pain related to same.

21 DATED: August 22, 2019

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24 ELAYNA J. YOUCHAH
25 UNITED STATES MAGISTRATE JUDGE
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